

## REMARKS

Claims 1-8 are pending in the application. Claims 1, 2, 4, and 8 have been amended. Claims 6-7 are canceled. No new matter has been added as the amendments have support in the specification as originally filed.

### **Rejection under 35 U.S.C. 103(a) as being unpatentable over Takahashi in view of Kouznetsov**

Claims 1-3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al. (US 5,901,320) in view of Kouznetsov et al. (US 6,782,527). Applicants respectfully traverse the Examiner's rejection. MPEP §2143 provides:

“To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

Takahashi is directed to a communication system comprising a plurality of network elements and a monitoring apparatus for centrally monitoring and controlling these network elements. Each of the network elements has a plurality of CPU's and flash memory for accommodating programs to be performed by the CPU's. When the version of any program is changed, the monitoring apparatus selects the program to be updated for each CPU (Abstract).

In contrast to Takahashi, the claims recite a system in which a sever in a local network communicates with a plurality of appliances. The local server is in turn connected to a remote server which transfers to the local server updated software versions based on a request from the local server. The appliances individually do not submit a request directly to the remote sever. The appliances also do not make a determination that a new update is needed. It is the local server that performs the latter two functions. That is, the local server determines that an update is available for one of the appliances and requests for the update information to be forwarded from the remote server. In this manner, a central unit (i.e., the local server) performs the following tasks for each of the appliances connected to it in the local area network: (1) Determine if a new update is available; (2) Request the new update to be downloaded from the remote server; and (3) Install the new updates on a selected appliance (i.e., the appliance for which a new update is available).

Takahashi, however, fails to disclose all of the above noted elements and further teaches away from them. That is, according to Takahashi, a direct link is established between each device (i.e., CPU) and the server that provides the updated programs. More particularly, Takahashi teaches away from using a local area server as a central unit which determines the availability of updates for each of the appliances in a local network. In other words, according to Takahashi, each device is responsible for separately and individually performing the above enumerated 3 tasks. Instead, in the claimed invention, the responsibility of performing those tasks are delegated to the local area server. The applicant has thoroughly reviewed the teachings of Takahashi and respectfully notes that Takahashi does not suggest any of the above noted structural and functional elements.

Kouznetsov fails to cure the deficiencies of Takahashi. Col. 6 lines 40-49 and Fig. 2 of Kouznetsov disclose “a software-implemented agent 202 executes on the computing devices within the appliance 117. Agent 202 performs a relatively small number of functions in the application management solution in accordance with the present invention. First, agent 202 establishes a frequent connection with application management server 108 to check for updates in code and/or data used to provide the

application services. When appropriate, agent 202 downloads updated code into memory and/or storage devices within appliance 117.” A review of the passage above reveals that agent 202 is executed within the appliance 117. Therefore, in the same way as Takahashi, each appliance is connected to the application manager server such that the application manager server directly sends updates to the appliance. As such, as noted above with respect to Takahashi, each appliance in Kouznetsov is individually responsible for requesting, downloading, and replacing the software of the appliance through the network. The connect server 105 of Kouznetsov does not perform any of the 3 enumerated functions as claimed.

Thus, both Takahashi and Kouznetsov teach away from the claimed invention by requiring the agent within each appliance to individually and independently request, download, and replace the software directly from a remote server. Where two references teach away, it would be unreasonable for the Examiner to suggest that they can be combined in the direction of the claimed invention.

Additionally, the Office Action states that elements 101, 105, and 108 of Fig. 1 of Kouznetsov disclose “wherein a home server is connected to an appliance company server over an Internet,” as recited in amended claim 1. Applicant submits that element 101 of Kouznetsov discloses a network infrastructure, such as the Internet. Additionally, element 108 discloses an application management server. Applicant respectfully submits that connect server 105 cannot teach or suggest a home server as recited in claim 1, particularly for the following reason. Col. 5 lines 28-31 of Kouznetsov disclose that “connect servers 105 are implemented by connection sharing software such as Microsoft Internet connection sharing service (ICS) or by software such as found in routers.” Applicant submits that connection sharing software is not the same as a home server recited in claim 1. As recited in claim 1, “the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to the home server in the local home network require a software update.” Kouznetsov fails to teach or suggest that the connect servers determine which one of a said plurality of home appliances require a software update. Applicant submits that the connect server disclosed

in Kouznetsov is simply a device which allows a plurality of appliances to share a network connection. Therefore, in addition to the reasons presented above, Kouznetsov cannot teach or suggest “wherein a home server is connected to an appliance company server over an Internet,” as recited in amended claim 1. The applicant has thoroughly reviewed the teachings of Kouznetsov and respectfully notes that Takahashi does not suggest any of the above noted structural and functional elements either.

“A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step.” MPEP § 2173.05. Accordingly, the Examiner is requested to point out with particularity all the claimed elements or otherwise withdraw the 103 grounds of rejection.

For the reasons presented above, claim 1 should be allowable over the cited combination of references. Additionally, claim 8 incorporates elements of allowable claim 1. Specifically, claim 8 recites “a remote server connected to the home server over a remote connection” and “a two-way communication connection is established between the home server and the remote server.” Thus, claim 8 should be allowable for reasons similar to those set out in conjunction with claim 1. Additionally, claims 2-3 should be allowable by virtue of their dependence on allowable claim 1.

**Rejection under 35 U.S.C. 103(a) as being unpatentable over Fitzpatrick in view of Takahashi.**

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzpatrick in view of Takahashi.

The Office Action states that Fitzpatrick does not disclose “wherein the home server is a centralized local home server, which determines which one of home

appliances in the local home network require a software update,” as recited in claim 4. The Office Action further states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Takahashi into the teaching of Fitzpatrick to include “wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update.” Applicant respectfully disagrees.

Applicant respectfully submits that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining the teachings.” In re Sernaker, 217 USPQ 1, 6 (Fed. Cir. 1983). Further, it is well settled that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Since obviousness may not be established by hindsight reconstruction or conjecture, Applicant invites the Examiner to point out the alleged motivation to combine with specificity,<sup>1</sup> or alternatively provide a reference or affidavit in support thereof pursuant to MPEP §2144.03.<sup>2</sup>

It is respectfully submitted that the cited prior art references cannot be combined to teach the claimed invention. Further, even if one is modified in accordance to the teaching of the other, the resultant modification would be an impractical or inoperable combination.

The Office Action states that Takahashi does not teach a home server connected to an appliance company server over an Internet and a two-way communication connection established between the home server and the appliance server. Thus, Takahashi does not intend for the monitoring apparatus to establish a two-way

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<sup>1</sup> *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

<sup>2</sup> “The rationale supporting an obviousness rejection may be based on common knowledge in the art or “well-known” prior art . . . If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner . . . the facts must be supported, when called for by the applicant, by an affidavit from the examiner.”

communication connection with an appliance server. Rather, Takahashi intends for the monitoring apparatus to store “in advance a plurality of program files for each of the CPU’s in each network element.” (Takahashi, Col. 4 lines 23-25). On the contrary, Fitzpatrick teaches downloading program code from a remote source directly to a set-top-box (STB) and determining whether the downloaded data is a match for the STB and should be installed (Fitzpatrick par. [0059]).

As such, Takahashi does not provide a motivation to combine with Fitzpatrick because Takahashi requires the monitoring apparatus to store in advance a plurality of program files for each CPU, unlike Fitzpatrick which downloads information and determines whether the downloaded data should be installed. Applicant submits that there is no indication in the Office Action, how such combination is possible, as the two systems are independently complex and cannot be easily modified to work with each other. As such, no portions of the cited references provide a suggestion or motivation for combining the references in a manner that would make the invention as recited in claims 4-7 obvious.

For the above reasons, the invention as recited in the amended claim 4 is distinguishable over the references cited by the Examiner. Independent claim 6 substantially incorporates the discussed limitations of claim 4 and therefore claim should be in condition for allowance. Claim 5 depends on claim 4 and should also be in condition for allowance by the virtue of their dependence on an allowable base claim.

In view of the above remarks, Applicant submits that claims pending in the present application are in condition for allowance. Reexamination and reconsideration of the application, as originally filed, are requested. No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

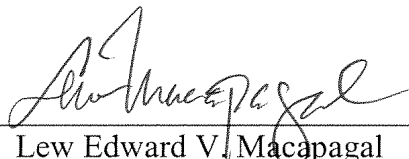
If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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